

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
THIRTIETH REGION

Milwaukee, WI

**CLEAR CHANNEL OUTDOOR, INC., MILWAUKEE,  
DIVISION<sup>1</sup>**

**Employer**

**Case 30-RD-1498**

**and**

**CHRISTOPHER J. LOHR, An Individual**

**Petitioner**

**and**

**SIGN, DISPLAY AND TRADE SHOW LABORERS LOCAL  
UNION 770, INTERNATIONAL UNION OF PAINTERS &  
ALLIED TRADES<sup>2</sup>**

**Union**

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding,<sup>3</sup> the undersigned makes the following findings and conclusions:<sup>4</sup>

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<sup>1</sup>The name of the Employer appears as amended at hearing.

<sup>2</sup>The name of the Union appears as described by counsel for the Union and by the business representative Dean Wanty, who negotiated the Union's most recent bargaining agreements with the Employer. For the reasons detailed in this decision, no reference is made in the caption to Painters District Council No. 7.

<sup>3</sup>Timely briefs from the Employer and Union have been received and duly considered.

<sup>4</sup> 1. The hearing officer's rulings made at the hearing were free from prejudicial error and are affirmed. 2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction. The parties stipulated, and I find, that the Employer is a Delaware corporation engaged in the sale and display of outdoor advertising from its Pewaukee, Wisconsin location and that during the past calendar year, a representative period, the Employer purchased and received goods and materials valued in excess of \$50,000 directly from suppliers located outside the State of Wisconsin. 3. The Union claims to represent certain employees of the Employer. The parties stipulated, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act. 4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

## **INTRODUCTION AND ISSUES**

This is my determination of issues raised by the present decertification petition.

Specifically,

1. What name will be used to identify the Union in this proceeding?
2. Is Patrick Rogneley eligible to vote in the election?

The Union, by counsel, asserts its correct legal name is “Sign, Display and Trade Show Laborers Local Union 770, Painters and Allied Trades District Council No.7, International Union of Painters & Allied Trades.” The Union, at the hearing and in its brief, further argues “...the District Council is legally the bargaining representative on behalf of its Local Unions and the Local Unions are a subordinate body of the District Council.” (Union brief at page 4). The Employer contends it “...has historically only had a collective bargaining relationship with Local 770.” (Employer’s brief at pages 2 and 3), and only it [without reference to District Council] should appear on ballot. For reasons, detailed below, I agree that reference to the District Council No. 7 should not appear and it would be inappropriate in this proceeding to alter Union’s name as argued by the Union.

With regard to the second issue, whether Patrick Rogneley is eligible to vote in the election, the Union contends he is eligible because his discharge is the subject of a grievance in arbitration. Contrary to the Union, the Employer asserts that because Rogneley is not on the active payroll because he was discharged, he is not eligible to vote. For the reasons described in this Decision, I agree with the Union that Rogneley is eligible to vote.

## **BACKGROUND, BARGAINING HISTORY, AND THE CURRENT BARGAINING AGREEMENT**

The Employer is engaged in the sale and display of outdoor advertising in southeastern Wisconsin. The Union and Employer (or its predecessors) have been parties to series of collective bargaining agreements. These agreements, for at least the last twelve years, were with

the Union (Local 770). The most recent agreement, described as a “Sign Trade Agreement” was effective from January 25, 2007 through January 24, 2008 (Joint Exhibit 1, referred to as Agreement). The Agreement states it is between the Employer and “Local Union 770”, of the International Union of Painters and Allied Trades, AFL-CIO. The contract in Article I, Definition, Section 2, states:

Section 2: The Sign, Display and Screen Process and Allied Trade Union Local 770 of the International Union of Painters and Allied Trades, AFL-CIO, will be referred to in this Agreement as the “Union”. The International Union of Painters and Allied Trades, AFL-CIO, will be referred to in this Agreement as the “International”.

Article II Recognition reads as follow:

Section 1: The Employer hereby recognizes the Union as the exclusive collective bargaining agent for all Construction Foremen, Construction Workers, Laborers, and Trainees employed by the Employer in the following counties in the State of Wisconsin: Milwaukee, Ozaukee, Waukesha, Washington, Racine, and Kenosha (“Employees”) (footnote omitted).

The parties’ grievance arbitration procedures set forth in Article VII contain multiple references to the Union. For example, paragraph c, in part, states “...the Union may submit the grievance to arbitration for final disposition...” Additional references to the Union appear in the following Articles: XIII, No Strike/No Lockout; XIV, Safety and Health; XV, Pension Plan; XX, Union Waiver Under Americans with Disabilities Act; and XXI Savings – Duration. My review of the Agreement discloses no reference to District Council No. 7.

The Union’s witness, Dean Wanty, testified he is employed by the District Council and that his position is director of servicing and business representative for the District Council. He testified the Council was chartered in April 2003 and actually formed in July 1, 2003.

Wanty participated in the negotiations that resulted in the most recent Agreement. Wanty testified as follows:

Q. (Attorney Plosa) - ... You attempted to introduce District Council 7 as the representative in the contract [Agreement].

A. (Wanty) – That’s correct.

Q. And isn’t it true that the Company [Employer] rejected that?

A. That’s correct.

Q. And isn’t it true that you withdrew that proposal?

A. I did withdraw the proposal because I figured the constitution [Constitution of The International Union of Painters and Allied Trades; Union Exhibit 1] covers it all.

The record contains only limited additional evidence regarding the formation of District Council 7 and the relationship of the Union and District Council 7. At no time has the Employer agreed that District Council 7 can be substituted for the Union as the bargaining representative of the Employer’s represented employees.

#### **FACTS – STATUS OF PATRICK ROGNEY**

Patrick Rogney was discharged by the Employer on April 2, 2003. His discharge was arbitrated by the Union, and a Decision and Award ordered his reinstatement on December 17, 2003. The Employer sought to vacate the Arbitration Award and on June 6, 2007, the United States District Court for Eastern District of Wisconsin issued a Decision and Order Denying Plaintiff’s Motion to Vacate Arbitration Award, Granting Defendant’s Motion to Affirm Award and Dismissing Case. The parties stipulated the Employer has appealed the District Court’s Decision and Order to the United States Court of Appeals for the Seventh Circuit. Oral argument occurred on February 25, 2008.

#### **ANALYSIS – NAME OF THE UNION**

As noted, the Union asserts that its correct legal name is: Sign, Display and Trade Show Laborers Local Union 770, Painters & Allied Trades District Council No. 7, International Union of Painters & Allied Trades. Normally, the parties agree how they will be identified in a Board

proceeding. Here, the parties cannot agree. If the Union were merely seeking to clarify its legal name without changing the recognized bargaining representative, I would permit such a clarification. The Employer argues the Union is doing more. I agree. In bargaining for the most recent Agreement, the Union attempted to “introduce District Council 7 as the representative in this contract.”<sup>5</sup>

This was rejected by the Employer. Given the Union’s failure to secure Employer acceptance of its proposed name change, I am unwilling to do so in this proceeding. Such a name change potentially could confuse voters and result in a Certification of Representative that was not intended by the parties. Moreover, permitting a name change would be contrary to the repeated, unambiguous, and current identification of the Union in its most recent bargaining agreement.

Additionally, in merger and affiliation situations (often in an Amendment to Certification proceeding), the Board is asked to decide if the post-affiliation union either lacks or retains substantial continuity with the pre-affiliation union. See *Raymond F. Kravis Center for the Performing Arts*, 351 NLRB No. 19 (September 28, 2007). The “substantial continuity” of Local 770 following its affiliation with District Council 7 was not an issue in this proceeding and was not litigated by the parties. Thus, no conclusion can be made concerning its “substantial continuity” following affiliation. Based on the above analysis, the Union will appear on the ballot as Sign, Display, Trade Show Laborers Local Union 770, International Union of Painters & Allied Trades.

### **STATUS OF PATRICK ROGNEY**

The Employer asserts Rogney is ineligible to vote because he was discharged. The record establishes Rogney’s discharge was the subject of an arbitration where the reinstatement was

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<sup>5</sup> Similarly in its brief the Union declares “...the District Council is legally the bargaining representative on behalf of its local unions...”

directed. The Arbitrator's decision was affirmed, but it is currently being appealed. Since *Pacific Tile and Porcelan Company* 137 NLRB 1358 (1962), the Board has permitted employees whose status is subject to grievance-arbitration procedures to vote subject to challenge. In *Pacific Tile*, two employees' terminations were the subject of pending grievances. The Board concluded:

A grievance determination favorable to the union's position in cases of this type will result in a holding that the disputed men were employees on the critical dates, while a contrary determination will result in a finding that they were not. Any such award would have an impact on the election only in the event the votes could be determinative, but if they could affect the results it would be improper for the Board to disenfranchise the men out of hand.

*Id.* at 1366; see also *Morgan Services, Inc.* 339 NLRB 463 (2003) and *Curtis Industries*, 310 NLRB 1212 (1993).

Accordingly, I find Patrick Roney should be permitted to cast a challenged ballot. A final determination on his eligibility, if necessary, will be governed by the pending appeal before the Seventh Circuit.

### **CONCLUSION**

Based on the foregoing, I direct an election in the following stipulated bargaining unit which I find is appropriate:

All construction foremen, construction workers, laborers, and trainees employed by the Employer in the following counties in the State of Wisconsin: Milwaukee, Ozaukee, Waukesha, Washington, Racine, and Kenosha; and excluding all other employees, office employees, independent contractors, professional employees, guards, and supervisors as defined in the Act.<sup>6</sup>

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among employees in the unit found appropriate at the time and place set forth in the notice of election to be issued

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<sup>6</sup> The parties stipulated and I find that Steve Bubb, is excluded from the bargaining unit as a supervisor.

subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Sign, Display and Trade Show Laborers Local Union 770, International Union of Painters & Allied Trades.

### **LIST OF VOTERS**

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to the list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 384 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer shall file with the undersigned, **two** copies of an election eligibility list, containing the **full** names (including first

and last names) and addresses of all the eligible voters, and upon receipt, the undersigned shall make the list available to all parties to the election. To speed preliminary checking and the voting process itself, it is requested that the names be alphabetized. **In order to be timely filed, such list must be received in the Regional Office, 310 West Wisconsin Avenue, Suite 700, Milwaukee, Wisconsin 53203 on or before June 20, 2008.** No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, N.W., Washington, DC 20570. **This request must be received by the Board in Washington by June 27, 2008.**

### **OTHER ELECTRONIC FILINGS**

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board web site at [www.nlr.gov](http://www.nlr.gov). On the home page of the website, select the **E-Gov** tab and click on **E-Filing**. Then select the NLRB office for which you wish to

E-File your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed.

Signed at Milwaukee, Wisconsin on June 13, 2008.

/s/Irving E. Gottschalk

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